

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children, Families, and Elder Affairs Committee

BILL: SPB 7058

INTRODUCER: For Consideration by Children, Families and Elder Affairs Committee

SUBJECT: Open Government Sunset Review of Parental Identity of Abandoned Infant Exemption

DATE: February 12, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Goltry	Jameson		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

Section 383.51, F.S., makes confidential and exempt from public disclosure the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station. This section was certified by the Division of Statutory Revision as being subject to open government sunset review and the exemption will repeal without legislative action to save it. This bill retains the exemption.

This bill substantially amends the following sections of the Florida Statutes: s. 383.51.

II. Present Situation:

Public Records – The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24 of the State Constitution.

constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁸

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁹ If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.¹⁰

The Open Government Sunset Review Act¹¹ provides for the systematic review, through a 5 year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate

³ Chapter 119, F.S.

⁴ Section 119.011(11), F.S.

⁵ Article I, s. 24(c) of the State Constitution.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁷ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Art. I, s. 24(c) of the State Constitution.

⁹ Attorney General Opinion 85-62.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹¹ Section 119.15, F.S.

and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- 1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹²

The act requires consideration of the following:

- 1) What specific records or meetings are affected by the exemption?
- 2) Whom does the exemption uniquely affect, as opposed to the general public?
- 3) What is the identifiable public purpose or goal of the exemption?
- 4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- 5) Is the record or meeting protected by another exemption?
- 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Public Disclosure Exemption for Parents Who Leave Newborn Infants at Certain

Locations – In 2000, in response to a growing concern about the number of newborns who were discovered abandoned in dumpsters and other unsafe locations, the Florida Legislature joined a substantial number of other states in passing legislation designed to provide a safe alternative.¹³ Florida law provides the framework for a parent to leave a newborn infant, approximately three days old or younger, at a hospital, emergency medical services (EMS) station, or fire station under certain circumstances without fear of civil or criminal investigation and prosecution.¹⁴ Additionally, under s. 383.50, F.S., unless there is actual or suspected child abuse or neglect, any parent who leaves a newborn infant with a firefighter, emergency medical technician, or paramedic at a fire station or who brings a newborn infant to an emergency room of a hospital

¹² Section 119.15(4)(b), F.S.

¹³ Chapter 2000-188, L.O.F.

¹⁴ See ss. 383.50, 39.201(2)(g), 63.0423, and 827.035, F.S.

“has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed....”¹⁵

Exemption Under Review – Under s. 383.51, F.S., the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, F.S., is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

III. **Effect of Proposed Changes:**

Section 383.51 F.S., makes confidential and exempt from public disclosure the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, F.S. This section was certified by the Division of Statutory Revision as being subject to open government sunset review and the exemption will repeal without legislative action to save it. This bill retains the exemption.

The bill will take effect upon becoming a law.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This proposed committee bill is the result of an open government sunset review of s. 383.51, F.S. This exemption protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety. The exemption was reviewed by committee staff according to the standards of the Open Government Sunset Review Act, *See*, Interim Project Report 2007-205 by the Committee on Children, Families, and Elder Affairs. In that report, it was recommended that the exemption should be retained.

C. Trust Funds Restrictions:

None.

V. **Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

¹⁵ Section 383.50(5), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
